

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RICHARD ANTHONY PARKER,
Petitioner.

No. 2 CA-CR 2013-0272-PR
Filed March 3, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20121130001

The Honorable Scott Rash, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Richard A. Parker, Florence
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Richard Parker seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Parker has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Parker, who had been convicted of indecent exposure in California and was required to register as a sex offender there, was convicted of failure to give notice of a change of address or name. The trial court imposed a presumptive, 2.5-year term of imprisonment. Parker thereafter initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and had "not observed evidence of any . . . meritorious Rule 32 grounds for relief." As counsel had requested, the trial court granted Parker time in which to file a pro se supplemental petition. Parker filed a form "notice of post-conviction relief," in which he apparently argued he had received ineffective assistance of counsel based on counsel's having failed to seek review of the trial court's ruling on his motion to dismiss the proceeding made pursuant to Rule 16.6, Ariz. R. Crim. P.¹ The trial court summarily denied relief.

¹Parker's Rule 16.6 motion was filed after he had entered, and the court had accepted, his guilty plea, but before sentencing. The trial court denied the motion, concluding A.R.S. § 13-3821 required Parker to register as a sex offender in Arizona.

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¶3 Parker then filed a motion for reconsideration “with an Amendment to file a[] Supplemental Petition of Post Conviction Relief.” In that motion, he argued he had mistakenly filed the inadequate notice of post-conviction relief instead of a petition because he was a layman and had “[r]ushed to prepa[re] and meet the deadline.” He requested that the court grant the motion for reconsideration and consider the arguments made therein as a supplement to his pro se petition, arguing, as he had in his Rule 16.6 motion, he was actually innocent of the charge to which he had pled guilty because he was not required to register as a sex offender under Arizona law. Noting that it had rejected this argument in denying Parker’s earlier motion, the trial court denied the motion.

¶4 On review, Parker maintains he is “actually innocen[t] of the charged offense” and that the issue raised in his motion for reconsideration was “incorrectly decided.” He presents no further argument, but merely attaches the motion for reconsideration filed below to his petition for review. Parker’s failure to meaningfully comply with Rule 32.9(c) would justify our summary refusal to grant review, *see* Ariz. R. Crim. P. 32.9(c)(1), but in our discretion we nonetheless review the trial court’s ruling, *see* Ariz. R. Crim. P. 32.9(f).

¶5 Parker was convicted of indecent exposure in California. The California Sex Offender Registration Act requires a person convicted of indecent exposure in violation of Cal. Penal Code § 314 to register with local law enforcement where he or she is residing “for the rest of his or her life while residing in California.” Cal. Penal Code § 290(b). In turn, Arizona requires anyone who has been convicted of “an offense committed in another jurisdiction . . . who is required to register by the convicting or adjudicating jurisdiction” to register with local law enforcement “within ten days after entering and remaining in any county” in Arizona. A.R.S. § 13-3821(A). Thus, as the trial court properly concluded, because Parker was required to register in California, he was required to register in Arizona.

¶6 Parker admitted at his change-of-plea hearing that he was required to register, and nothing in the statutes on which he now relies undermines the factual basis for his guilty plea.

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Therefore, even assuming this claim could be properly characterized as one of actual innocence under Rule 32.1(h) or was not waived by his guilty plea, *see State v. Flores*, 218 Ariz. 407, ¶ 6, 188 P.3d 706, 708-09 (App. 2008), it is without merit.

¶7 Accordingly, although the petition for review is granted, relief is denied.